

United States, for the purpose of initiating adoption proceedings. C lives with A and is a member of his household for the remainder of 1958 and for the entire calendar year 1959. On July 1, 1959, the adoption proceedings were completed and C became the legally adopted child of A. If C otherwise qualifies as a dependent, he may be claimed as a dependent by A for 1959.

(b) A payment to a wife which is includible in her gross income under section 71 or section 682 shall not be considered a payment by her husband for the support of any dependent.

(c)(1) For purposes of determining the existence of any of the relationships specified in section 152 (a) or (b)(1), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) For any taxable year beginning after December 31, 1958, a child who is a member of an individual's household also shall be treated as a child of such individual by blood if the child was placed with the individual by an authorized placement agency for legal adoption pursuant to a formal application filed by the individual with the agency. For purposes of this subparagraph an authorized placement agency is any agency which is authorized by a State, the District of Columbia, a possession of the United States, a foreign country, or a political subdivision of any of the foregoing to place children for adoption. A taxpayer who claims as a dependent a child placed with him for adoption shall attach to his income tax return a statement setting forth the name of the child for whom the dependency deduction is claimed, the name and address of the authorized placement agency, and the date the formal application was filed with the agency.

(3) The application of this paragraph may be illustrated by the following example:

Example. On March 1, 1959, D, a resident of the United States, made formal application to an authorized child placement agency for the placement of E, a resident of the United States, with him for legal adoption. On June 1, 1959, E was placed with D for legal adoption. During the year 1959 E received over one-half of his support from D. D may claim E as a dependent for 1959. Since E was a resident of the United States, his qualification as a dependent is in no way based on the pro-

visions of section 152(b)(3)(B). Therefore, it is immaterial that E was not a member of D's household during the entire taxable year.

(4) For purposes of determining the existence of any of the relationships specified in section 152 (a) or (b)(1), a foster child of an individual (if such foster child satisfies the requirements set forth in paragraph (b) of §1.152-1 with respect to such individual) shall, for taxable years beginning after December 31, 1969, be treated as a child of such individual by blood. For purposes of this subparagraph, a foster child is a child who is in the care of a person or persons (other than the parents or adopted parents of the child) who care for the child as their own child. Status as a foster child is not dependent upon or affected by the circumstances under which the child became a member of the household.

(d) In the case of a joint return it is not necessary that the prescribed relationship exist between the person claimed as a dependent and the spouse who furnishes the support; it is sufficient if the prescribed relationship exists with respect to either spouse. Thus, a husband and wife making a joint return may claim as a dependent a daughter of the wife's brother (wife's niece) even though the husband is the one who furnishes the chief support. The relationship of affinity once existing will not terminate by divorce or the death of a spouse. For example, a widower may continue to claim his deceased wife's father (his father-in-law) as a dependent provided he meets the other requirements of section 151.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6603, 28 FR 7094, July 11, 1963; T.D. 7051, 35 FR 11020, July 9, 1970; T.D. 7291, 38 FR 33396, Dec. 4, 1973]

§ 1.152-3 Multiple support agreements.

(a) Section 152(c) provides that a taxpayer shall be treated as having contributed over half of the support of an individual for the calendar year (in cases where two or more taxpayers contributed to the support of such individual) if—

(1) No one person contributed over half of the individual's support,

(2) Each member of the group which collectively contributed more than half of the support of the individual would

have been entitled to claim the individual as a dependent but for the fact that he did not contribute more than one-half of such support.

(3) The member of the group claiming the individual as a dependent contributed more than 10 percent of the individual's support, and

(4) Each other person in the group who contributed more than 10 percent of such support furnishes to the taxpayer claiming the dependent a written declaration that such other person will not claim the individual as a dependent for any taxable year beginning in such calendar year.

(b) *Examples.* Application of the rule contained in paragraph (a) of this section may be illustrated by the following examples:

Example 1. During the taxable year, brothers A, B, C, and D contributed the entire support of their mother in the following percentages: A, 30 percent; B, 20 percent; C, 29 percent; and D, 21 percent. Any one of the brothers, except for the fact that he did not contribute more than half of her support, would have been entitled to claim his mother as a dependent. Consequently, any one of the brothers could claim a deduction for the exemption of the mother if he obtained a written declaration (as provided in paragraph (a)(4) of this section) from each of the other brothers. Even though A and D together contributed more than one-half the support of the mother, A, if he wished to claim his mother as a dependent, would be required to obtain written declarations from B, C, and D, since each of those three contributed more than 10 percent of the support and, but for the failure to contribute more than half of the mother's support, would have been entitled to claim his mother as a dependent.

Example 2. During the taxable year, E, an individual who resides with his son, S, received his entire support for that year as follows:

Source	Percentage of total
Social Security	25
N, an unrelated neighbor	11
B, a brother	14
D, a daughter	10
S, a son	40
Total received by E	100

B, D, and S are persons each of whom, but for the fact that none contributed more than half of E's support, could claim E as a dependent for the taxable year. The three together contributed 64 percent of E's support, and, thus, each is a member of the group to

be considered for the purpose of section 152(c). B and S are the only members of such group who can meet all the requirements of section 152(c), and either one could claim E as a dependent for his taxable year if he obtained a written declaration (as provided in paragraph (a)(4) of this section) signed by the other, and furnished the other information required by the return with respect to all the contributions to E. Inasmuch as D did not contribute more than 10 percent of E's support, she is not entitled to claim E as a dependent for the taxable year nor is she required to furnish a written declaration with respect to her contributions to E. N contributed over 10 percent of the support of E, but, since he is an unrelated neighbor, he does not qualify as a member of the group for the purpose of the multiple support agreement under section 152(c).

(c)(1) The member of a group of contributors who claims an individual as a dependent for a taxable year beginning before January 1, 2002, under the multiple support agreement provisions of section 152(c) must attach to the member's income tax return for the year of the deduction a written declaration from each of the other persons who contributed more than 10 percent of the support of such individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent.

(2) The taxpayer claiming an individual as a dependent for a taxable year beginning after December 31, 2001, under the multiple support agreement provisions of section 152(c) must provide with the income tax return for the year of the deduction—

(i) A statement identifying each of the other persons who contributed more than 10 percent of the support of the individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent; and

(ii) A statement indicating that the taxpayer obtained a written declaration from each of the persons described in section 152(c)(2) waiving the right to claim the individual as a dependent.

(3) The taxpayer claiming the individual as a dependent for a taxable year beginning after December 31, 2001, must retain the waiver declarations and should be prepared to furnish the

waiver declarations and any other information necessary to substantiate the claim, which may include a statement showing the names of all contributors (whether or not members of the group described in section 152(c)(2)) and the amount contributed by each to the support of the claimed dependent.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6603, 28 FR 7094, July 11, 1963; T.D. 8989, 67 FR 20031, Apr. 24, 2002; T.D. 9040, 68 FR 4920, Jan. 31, 2003]

§ 1.152-4 Special rule for a child of divorced or separated parents or parents who live apart.

(a) *In general.* A taxpayer may claim a dependency deduction for a child (as defined in section 152(f)(1)) only if the child is the qualifying child of the taxpayer under section 152(c) or the qualifying relative of the taxpayer under section 152(d). Section 152(c)(4)(B) provides that a child who is claimed as a qualifying child by parents who do not file a joint return together is treated as the qualifying child of the parent with whom the child resides for a longer period of time during the taxable year or, if the child resides with both parents for an equal period of time, of the parent with the higher adjusted gross income. However, a child is treated as the qualifying child or qualifying relative of the noncustodial parent if the custodial parent releases a claim to the exemption under section 152(e) and this section.

(b) *Release of claim by custodial parent—(1) In general.* Under section 152(e)(1), notwithstanding section 152(c)(1)(B), (c)(4), or (d)(1)(C), a child is treated as the qualifying child or qualifying relative of the noncustodial parent (as defined in paragraph (d) of this section) if the requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Support, custody, and parental status—(i) In general.* The requirements of this paragraph (b)(2) are met if the parents of the child provide over one-half of the child's support for the calendar year, the child is in the custody of one or both parents for more than one-half of the calendar year, and the parents—

(A) Are divorced or legally separated under a decree of divorce or separate maintenance;

(B) Are separated under a written separation agreement; or

(C) Live apart at all times during the last 6 months of the calendar year whether or not they are or were married.

(ii) *Multiple support agreement.* The requirements of this paragraph (b)(2) are not met if over one-half of the support of the child is treated as having been received from a taxpayer under section 152(d)(3).

(3) *Release of claim to child.* The requirements of this paragraph (b)(3) are met for a calendar year if—

(i) The custodial parent signs a written declaration that the custodial parent will not claim the child as a dependent for any taxable year beginning in that calendar year and the noncustodial parent attaches the declaration to the noncustodial parent's return for the taxable year; or

(ii) A qualified pre-1985 instrument, as defined in section 152(e)(3)(B), applicable to the taxable year beginning in that calendar year, provides that the noncustodial parent is entitled to the dependency exemption for the child and the noncustodial parent provides at least \$600 for the support of the child during the calendar year.

(c) *Custody.* A child is in the custody of one or both parents for more than one-half of the calendar year if one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year.

(d) *Custodial parent—(1) In general.* The *custodial parent* is the parent with whom the child resides for the greater number of nights during the calendar year, and the *noncustodial parent* is the parent who is not the custodial parent. A child is treated as residing with neither parent if the child is emancipated under state law. For purposes of this section, a child resides with a parent for a night if the child sleeps—

(i) At the residence of that parent (whether or not the parent is present); or

(ii) In the company of the parent, when the child does not sleep at a parent's residence (for example, the parent and child are on vacation together).

(2) *Night straddling taxable years.* A night that extends over two taxable